

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

JILL L. STOFFEL,

Plaintiff,

v.

CAROLYN W. COLVIN,¹

Acting Commissioner of Social Security,

Defendant.

Case No. 6:12-cv-00513-ST

OPINION AND ORDER

Alan Stuart Graf, 316 Second Road, Summertown, TN 38483. Attorney for Plaintiff.

S. Amanda Marshall, United States Attorney, and Adrian L. Brown, Assistant United States Attorney, United States Attorney's Office, District of Oregon, 1000 S.W. Third Avenue, Suite 600, Portland, OR 97204-2902; David Morado, Regional Chief Counsel, Region X, and Lisa Goldoftas, Special Assistant United States Attorney, Office of the General Counsel, Social Security Administration, 701 Fifth Avenue, Suite 2900 M/S 221A, Seattle, WA 98104-7075. Attorneys for Defendant.

¹ After the filing of the Complaint in this case, the term of Michael J. Astrue, the originally named defendant Commissioner of Social Security, expired and, thus, the name of the current acting Commissioner has been substituted in the caption.

Michael H. Simon, District Judge.

United States Magistrate Judge Janice M. Stewart issued findings and recommendations in this case on April 29, 2013. Dkt. 34. Judge Stewart recommended that the Commissioner's decision be reversed and remanded for the calculation and award of benefits. No party has filed objections.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate's report[.]"); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (the court must review *de novo* magistrate's findings and recommendations if objection is made, "but not otherwise").

Although review is not required in the absence of objections, the Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the court review the magistrate's findings and recommendations for "clear error on the face of the record."

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Stewart's findings and recommendations for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Judge Stewart's

findings and recommendations, Dkt. 34. The Commissioner's decision is **REVERSED** and **REMANDED** for the immediate calculation and award of benefits.

IT IS SO ORDERED.

DATED this 28th day of May, 2013.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge